

UNITED STATES
COURT OF APPEALS
for the
ELEVENTH CIRCUIT

PROPOSED REVISIONS TO ELEVENTH CIRCUIT RULES
AND INTERNAL OPERATING PROCEDURES

- FEDERAL RULES OF APPELLATE PROCEDURE
- ELEVENTH CIRCUIT RULES
- *INTERNAL OPERATING PROCEDURES*

a certificate, the court of appeals will construe a party's filing of a timely notice of appeal as an application to the court of appeals for a certificate of appealability.

(c) An application to the court of appeals for a certificate of appealability may be considered by a single circuit judge. The denial of a certificate of appealability, whether by a single circuit judge or by a panel, may be the subject of a motion for reconsideration but may not be the subject of a petition for panel rehearing or a petition for rehearing en banc.

11th Cir. R. 22-2 Length of Application for a Certificate of Appealability. An application to the court of appeals for a certificate of appealability and a brief in support thereof (whether or not they are combined in a single document) collectively may not exceed the maximum length authorized for a party's principal brief [See FRAP 32(a)(7)]. A response and brief opposing an application is subject to the same limitations.

11th Cir. R. 22-3 Application for Leave to File a Second or Successive Habeas Corpus Petition or Motion to Vacate, Set Aside or Correct Sentence.

(a) Form. An applicant seeking leave to file a second or successive habeas corpus petition or motion to vacate, set aside or correct sentence ~~must~~ should use the appropriate form provided by the clerk of this court; ~~except in a case in which the sentence imposed is death~~. In a death sentence case, the use of the form is optional.

(b) Finality of Determination. Consistent with 28 U.S.C. § 2244(b)(3)(E), the grant or denial of an authorization by a court of appeals to file a second or successive habeas corpus petition or a motion pursuant to 28 U.S.C. § 2255 is not appealable and shall not be the subject of a motion for reconsideration, a petition for panel rehearing, or a petition for rehearing en banc.

11th Cir. R. 22-4 Petitions in Capital Cases Pursuant to 28 U.S.C. §§ 2254 and 2255.

(a) Stay Cases

(1) The following rules shall apply to cases brought pursuant to 28 U.S.C. §§ 2254 and 2255 in which a court has imposed a sentence of death, execution has been ordered, a United States District Court has denied a motion to stay execution pending appeal, and the petitioner has appealed to this court and has applied for a stay of execution. Except as changed by these rules the provisions of 11th Cir. R. 27-1 shall apply.

(2) Upon the filing of the notice of appeal in a case where the district court has denied a stay, the clerk of the district court shall immediately notify the clerk of this court by telephone of such filing.

(3) A motion for stay of execution and application for a certificate of appealability (if not granted by the district court) shall be filed with the clerk of this court together with documents required by 11th Cir. R. 27-1.

(4) Upon receipt of the notice of appeal and motion for stay (and application for a certificate of appealability, if not granted by the district court), the clerk shall docket the appeal and assign it to

FRAP 31. Serving and Filing Briefs

(a) Time to Serve and File a Brief.

- (1) The appellant must serve and file a brief within 40 days after the record is filed. The appellee must serve and file a brief within 30 days after the appellant's brief is served. The appellant may serve and file a reply brief within 14 days after service of the appellee's brief but a reply brief must be filed at least 7 days before argument, unless the court, for good cause, allows a later filing.**
- (2) A court of appeals that routinely considers cases on the merits promptly after the briefs are filed may shorten the time to serve and file briefs, either by local rule or by order in a particular case.**

(b) Number of Copies. Twenty-five copies of each brief must be filed with the clerk and 2 copies must be served on each unrepresented party and on counsel for each separately represented party. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on each unrepresented party and on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

(c) Consequence of Failure to File. If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument unless the court grants permission.

(As amended Mar. 30, 1970, eff. July 1, 1970; Mar. 10, 1986, eff. July 1, 1986; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Mar. 26, 2009, eff. Dec. 1, 2009.)

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11th Cir. R. 31-1 Briefs - Time for Serving and Filing.

(a) Briefing Schedule. Except as otherwise provided herein, the appellant shall serve and file a brief within 40 days after the date on which the record is deemed filed as provided by 11th Cir. R. 12-1. The appellee shall serve and file a brief within 30 days after service of the brief of the last appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the last appellee.

(b) Pending Motions. If any of the following motions or matters are pending in either the district court or the court of appeals at the time the appeal is docketed in the court of appeals or thereafter, the appellant (or appellant/cross-appellee) shall serve and file a brief within 40 days after the date on which the district court or the court of appeals rules on the motion or resolves the matter, and the appeal is allowed to proceed, or within 40 days after the date on which the record is deemed filed as provided by 11th Cir. R. 12-1, whichever is later:

- Motion to proceed In Forma Pauperis
- Motion for a Certificate of Appealability or to expand a Certificate of Appealability
- Motion of a type specified in FRAP 4(a)(4)(A) or FRAP 4(b)(3)(A)
- Determination of excusable neglect or good cause as specified in FRAP 4(a)(5)(A) or FRAP 4(b)(4)
- Assessment of fees pursuant to the Prisoner Litigation Reform Act
- Appointment and/or withdrawal of counsel
- Request for transcript at government expense
- Designation by appellee of additional parts of the proceedings to be ordered from the court reporter, order by appellee of such parts, or motion by appellee for an order requiring appellant to order such parts, as provided by FRAP 10(b)(3)(B) and (C)
- Motion to consolidate appeals, provided that such motion is filed on or before the date the appellant's brief is due in any of the appeals which are the subject of such motion

Except as otherwise provided below, if any of the foregoing motions or matters are pending in either the district court or the court of appeals after the appellant (or appellant/cross-appellee) has served and filed a brief, the appellee (or appellee/cross-appellant) shall serve and file a brief within 30 days after the date on which the district court or the court of appeals rules on the motion or resolves the matter, and the appeal is allowed to proceed, or within 30 days after the date on which the supplemental record is deemed filed as provided by 11th Cir. R. 12-1, whichever is later.

When a motion to consolidate appeals is filed or is pending after an appellant has served and filed a brief in any of the appeals which are the subject of such motion, the due date for filing appellee's brief shall be postponed until the court rules on such motion. If the motion is granted, the appellee (or appellee/cross-appellant) shall serve and file a brief in the consolidated appeals within 30 days after the date on which the court rules on the motion, or within 30 days after service of the last appellant's brief, whichever is later. If the motion is denied, the appellee (or appellee/cross-appellant) shall serve and file a brief in each separate appeal within 30 days after the date on which the court rules on the motion, or within 30 days after service of the last appellant's brief in that separate appeal, whichever is later.

(c) Effect of Other Pending Motions on Time for Serving and Filing Brief. Except as otherwise provided in this rule, a pending motion does not postpone the time for serving and filing any brief. For example, the appellee's brief remains due within 30 days after service of the appellant's brief even though a motion to file appellant's brief out-of-time or to file a brief which does not comply with the court's rules is pending. However, the filing of a motion to dismiss a criminal appeal based on an appeal waiver in a plea agreement shall postpone the due date for filing appellee's brief until the court rules on such motion. In addition, a motion to file a replacement brief under 11th Cir. R. 31-6(b) shall postpone the due date for filing an opposing party's response brief or reply brief until

the court rules on such motion. When the court rules on the motion, a new due date will be set for filing the next brief.

(d) Jurisdictional Question. If, upon review of the district court docket entries, order and/or judgment appealed from, and the notice of appeal, it appears that this court may lack jurisdiction over the appeal or cross-appeal, the court may request ~~counsel and pro se~~ the parties to advise the court in writing of their position with respect to the jurisdictional question(s) raised. The issuance of a jurisdictional question does not stay the time for filing appellant's brief otherwise provided by this rule. Unless otherwise ordered by the court, ~~the~~ the due date for filing appellee's or appellee-cross-appellant's brief shall be postponed until the court determines that the appeal or cross-appeal shall proceed or directs ~~counsel and pro se~~ the parties to address the jurisdictional question(s) in their briefs on the merits. When the court rules on a jurisdictional question, a new due date will be set for filing appellee's or appellee-cross-appellant's brief if the appeal or cross-appeal is allowed to proceed.

11th Cir. R. 31-2 Briefs and Appendices - Motion to Extend Time.

(a) First Request for an Extension of Time. A party's first request for an extension of time to file its brief or appendix or to correct a deficiency in the brief or appendix must set forth good cause. A first request for an extension of 14 days or less may be made by telephone or in writing, is not subject to 11th Cir. R. 26-1, and may be granted by the clerk. A first request for an extension of more than 14 days must be made by written motion setting forth with particularity the facts demonstrating good cause, and will only be acted upon by the court. When a briefing schedule has been established by court order, a first request for an extension must be made by written motion and will only be acted upon by the court. Any motion for extension of time by the court shall be subject to 11th Cir. R. 26-1.

(b) First Request Filed 14 or More Days in Advance. When a party's first request for an extension of time to file its brief or appendix is filed 14 or more days in advance of the due date for filing the brief or appendix and the requested extension of time is denied in full on a date that is seven or fewer days before the due date or is after the due date has passed, the time for filing the party's brief or appendix will be extended an additional seven days beyond the initial due date or the date the court order is issued, whichever is later, unless the court orders otherwise.

(c) Seven Days in Advance Requirement. If a party's first request for an extension of time to file its brief or appendix seeks an extension of more than 14 days, the motion must be filed at least seven days in advance of the due date for filing the brief or appendix. Such a motion received by the clerk less than seven days in advance of the due date for filing the brief or appendix will generally be denied by the court, unless the motion demonstrates that the good cause on which the motion is based did not exist earlier or was not and with due diligence could not have been known earlier or communicated to the court earlier.

(d) Second Request for an Extension of Time. A party's second request for an extension of time to file its brief or appendix or to correct a deficiency in its brief or appendix is extremely disfavored and is granted rarely. A party's second request for an extension will be granted only upon a showing of extraordinary circumstances that were not foreseeable at the time the first request was made. A second request must be made by written motion and will only be acted upon by the court.

(e) Extension of Time Must Be Requested Prior to Due Date. A request for an extension of time to file the brief or appendix pursuant to this rule must be made or filed prior to the expiration of the due date for filing the brief or appendix. The clerk is without authority to file an appellant's motion for an extension of time to file the brief or appendix received by the clerk after the expiration of the due date for filing the brief or appendix. A request for an extension of time to correct a deficiency in the brief or appendix pursuant to this rule must be made or filed within 14 days of the clerk's notice as provided in 11th Cir. R. 42-3. The clerk is without authority to file an appellant's motion for an extension of time to correct a deficiency in the brief or appendix received by the clerk after the expiration of the 14-day period provided by that rule. [See 11th Cir. R. 42-2 and 42-3 concerning dismissal for failure to prosecute in a civil appeal.]

11th Cir. R. 31-3 Briefs - Number of Copies. One originally signed brief and six copies (total of seven) shall be filed in all appeals, except that pro se parties proceeding in forma pauperis may file one originally signed brief and three copies (total of four). One copy must be served on counsel for each party separately represented.

For counsel using the ECF system, the electronically filed brief is the official record copy of the brief. Use of the ECF system does not modify the requirement that counsel must provide to the court seven paper copies of a brief. Counsel will be considered to have complied with this requirement if, on the day the electronic brief is filed, counsel sends seven paper copies to the clerk using one of the methods outlined in FRAP 25(a)(2)(B). Also see 11th Cir. R. 25-3(a).

11th Cir. R. 31-4 Expedited Briefing in Criminal Appeals. The clerk is authorized to expedite briefing when it appears that an incarcerated defendant's projected release is expected to occur prior to the conclusion of appellate proceedings.

11th Cir. R. 31-5 Electronic Brief Submission. This rule only applies to attorneys who have been granted an exemption from the use of the ECF system under 11th Cir. R. 25-3(b). On the day the attorney's paper brief is served, the attorney must provide the court with an electronic brief in accordance with directions provided by the clerk. The time for serving and filing a brief is determined by service and filing of the paper brief. If corrections are required to be made to the paper brief, a corrected copy of the electronic brief must be provided. The certificate of service shall indicate the date of service of the brief in paper format.

11th Cir. R. 31-6 Replacement Briefs.

(a) Replacement Briefs from Counsel Appointed to Represent a Pro Se Party. When an attorney is appointed to represent a pro se party in an appeal in which the party has filed a pro se brief, the attorney must file a new brief that will replace the brief filed by the pro se party, unless otherwise directed by the court.

(b) Replacement Briefs in Other Circumstances. Except as otherwise provided in subsection (a) of this rule, when a pro se party or the party's prior counsel has already filed a brief, a newly retained or appointed attorney may file a replacement brief only upon motion and with leave of court. If permission to file a replacement brief is granted, the brief filed by the pro se party or prior counsel will not be considered by the court; therefore, no portion of the prior brief may be adopted by reference. However, the new attorney may replicate any portion of the prior brief into the

replacement brief as an integral part thereof. A motion to file a replacement brief generally will be denied if an opposing party has already filed an appellee's principal brief or an appellant's reply brief, or if the appeal has already been submitted to a non-argument panel or assigned to an oral argument panel.

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I.O.P. - Briefing Schedule. The clerk's office will send counsel and pro se parties a letter confirming the due date for filing appellant's brief consistent with the provisions of 11th Cir. R. 12-1 and 11th Cir. R. 31-1, but delay in or failure to receive such a letter does not affect the obligation of counsel and pro se parties to file the brief within the time permitted by 11th Cir. R. 31-1. The clerk's office will also advise counsel and pro se parties of the rules and procedures governing the form of briefs.

Cross-Reference: FRAP 25, 26, 27; "E-Government Act of 2002," Pub. L. No. 107-347

FRAP 42. Voluntary Dismissal

- (a) **Dismissal in the District Court.** Before an appeal has been docketed by the circuit clerk, the district court may dismiss the appeal on the filing of a stipulation signed by all parties or on the appellant's motion with notice to all parties.
- (b) **Dismissal in the Court of Appeals.** The circuit clerk may dismiss a docketed appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. But no mandate or other process may issue without a court order. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the court.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

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11th Cir. R. 42-1 Dismissal of Appeals.

(a) Motions to Dismiss by Appellants or Petitioners and Joint Motions to Dismiss. If an appellant or petitioner files an unopposed motion to dismiss an appeal, petition, or agency proceeding, or if both parties file a joint motion to dismiss an appeal, petition, or agency proceeding, and the matter has not yet been assigned to a panel on the merits, the clerk may clerically dismiss the appeal, petition, or agency proceeding and in such circumstances will issue a copy of the order as and for the mandate. By issuing such a dismissal, the clerk expresses no opinion on the effect of that dismissal. If the appeal, petition, or agency proceeding has been assigned to a panel on the merits, any motion to dismiss will be submitted to that panel.

A joint motion to dismiss must be signed by counsel for each party encompassed by the motion, or by the party itself if proceeding pro se. All motions to dismiss must contain a Certificate of Interested Persons and Corporate Disclosure Statement in compliance with FRAP 26.1 and the accompanying circuit rules. If an appellant's or petitioner's motion to dismiss is opposed, it will be submitted to the court. For motions to dismiss criminal appeals, see also 11th Cir. R. 27-1(a)(7) and 27-1(a)(8).

(b) Dismissal for Failure to Prosecute. Except as otherwise provided for briefs and appendices in civil appeals in 11th Cir. R. 42-2 and 42-3, when appellant fails to file a brief or other required papers within the time permitted, or otherwise fails to comply with the applicable rules, the clerk shall issue a notice to counsel, or to pro se appellant, that upon expiration of 14 days from the date thereof the appeal will be dismissed for want of prosecution if the default has not been remedied by filing the brief or other required papers and a motion to file documents out of time. Within that 14-day notice period a party in default must seek leave of the court, by appropriate motion, to file documents out of time or otherwise remedy the default. Failure to timely file such motion will result in dismissal for want of prosecution.

The clerk shall not dismiss an appeal during the pendency of a timely filed motion for an extension of time to file appellant's brief or appendix, but if the court denies such leave after the expiration of the due date for filing the brief or appendix, the clerk shall dismiss the appeal

forthwith. The clerk shall not dismiss an appeal during the pendency of a timely filed motion to file documents out of time or otherwise remedy the default which is accompanied by the brief or other required papers, but if the court denies such leave the clerk shall dismiss the appeal forthwith.

If an appellant is represented by appointed counsel, the clerk may refer the matter to the Chief Judge for consideration of possible disciplinary action against counsel in lieu of dismissal.

11th Cir. R. 42-2 Dismissal in a Civil Appeal for Appellant's Failure to File Brief or Appendix by Due Date.

(a) Applicability of Rule. The provisions of this rule apply to all civil appeals, including Tax Court appeals, bankruptcy appeals, appeals in cases brought pursuant to 28 U.S.C. §§ 2254 and 2255, review of agency orders, and petitions for extraordinary writs when briefing has been ordered, but not including appeals of orders revoking supervised release or of orders entered pursuant to Rule 35 of the Federal Rules of Criminal Procedure or 18 U.S.C. § 3582.

(b) Notice of Due Date for Filing Brief and Appendix. Eleventh Circuit Rules 30-1(c) and 31-1 establish the due dates for filing the brief and appendix. To facilitate compliance, the clerk will send counsel and pro se parties a notice confirming the due date for filing appellant's brief and appendix consistent with 11th Cir. R. 30-1(c) and 31-1. However, delay in or failure to receive such notice does not affect the obligation of counsel and pro se parties to file the brief and appendix within the time permitted by the rules.

(c) Dismissal Without Further Notice. When an appellant has failed to file the brief or appendix by the due date as established by 11th Cir. R. 30-1(c) and 31-1 and set forth in the clerk's notice, or, if the due date has been extended by the court, within the time so extended, an appeal shall be treated as dismissed for failure to prosecute on the first business day following the due date. The clerk thereafter will enter an order dismissing the appeal and mail a copy of that order to counsel and pro se parties. If an appellant is represented by appointed counsel, the clerk may refer the matter to the Chief Judge for consideration of possible disciplinary action against counsel in lieu of dismissal.

(d) Effect of Pending Motion to Extend Time. The clerk shall not dismiss an appeal during the pendency of a timely filed motion for an extension of time to file appellant's brief or appendix, but if the court denies such leave after the expiration of the due date for filing the brief or appendix, the clerk shall dismiss the appeal.

(e) Motion to Set Aside Dismissal and Remedy Default. An appeal dismissed pursuant to this rule may be reinstated only upon the timely filing of a motion to set aside the dismissal and remedy the default showing extraordinary circumstances, accompanied by the required brief ~~and-or~~ appendix. Such a motion showing extraordinary circumstances, accompanied by the required brief ~~and-or~~ appendix, must be filed within 14 days of the date the clerk enters the order dismissing the appeal. The timely filing of such a motion, accompanied by the required brief ~~and-or~~ appendix, and a showing of extraordinary circumstances, is the exclusive method of seeking to set aside a dismissal entered pursuant to this rule. An untimely filed motion to set aside dismissal and remedy default must be denied unless the motion demonstrates extraordinary circumstances justifying the delay in filing the motion, and no further filings shall be accepted by the clerk in that dismissed appeal.

(f) Failure of Appellee to File Brief by Due Date. When an appellee fails to file a brief by the due date as established by 11th Cir. R. 31-1, or, if the due date has been extended by the court, within the time so extended, the appeal will be submitted to the court for decision without further delay, and the appellee will not be heard at oral argument (if oral argument is scheduled to be heard) unless otherwise ordered by the court.

11th Cir. R. 42-3 Dismissal in a Civil Appeal for Appellant's Failure to Correct a Deficiency in Briefs or Appendices Within 14 Days of Notice.

(a) Applicability of Rule. The provisions of this rule apply to all civil appeals, including Tax Court appeals, bankruptcy appeals, appeals in cases brought pursuant to 28 U.S.C. §§ 2254 and 2255, review of agency orders, and petitions for extraordinary writs when briefing has been ordered, but not including appeals of orders revoking supervised release or of orders entered pursuant to Rule 35 of the Federal Rules of Criminal Procedure or 18 U.S.C. § 3582.

(b) Notice to Correct a Deficiency in Briefs or Appendices. If briefs or appendices do not comply with the rules governing the form of briefs and appendices, the clerk will send counsel and pro se parties a notice specifying the matters requiring correction. A complete corrected set of replacement briefs or appendices must be filed in the office of the clerk within 14 days of the date of the clerk's notice.

(c) Dismissal Without Further Notice. When an appellant has failed to correct the brief or appendix within 14 days of the clerk's notice, or, if the due date has been extended by the court, within the time so extended, an appeal shall be treated as dismissed for failure to prosecute on the first business day following the due date. The clerk thereafter will enter an order dismissing the appeal and mail a copy of that order to counsel and pro se parties. If an appellant is represented by appointed counsel, the clerk may refer the matter to the Chief Judge for consideration of possible disciplinary action against counsel in lieu of dismissal.

(d) Effect of Pending Motion to Extend Time. The clerk shall not dismiss an appeal during the pendency of a timely filed motion for an extension of time to correct a deficiency in appellant's brief or appendix, but if the court denies such leave after the expiration of the due date for correcting a deficiency in the brief or appendix, the clerk shall dismiss the appeal.

(e) Motion to Set Aside Dismissal and Remedy Default. An appeal dismissed pursuant to this rule may be reinstated only upon the filing of a motion to set aside the dismissal and remedy the default showing extraordinary circumstances, accompanied by the required corrected brief or appendix. Such a motion showing extraordinary circumstances, accompanied by the required corrected brief or appendix, must be filed within 14 days of the date the clerk enters the order dismissing the appeal. The timely filing of such a motion, accompanied by the required corrected brief or appendix, and a showing of extraordinary circumstances, is the exclusive method of seeking to set aside a dismissal entered pursuant to this rule. An untimely filed motion to set aside dismissal and remedy default must be denied unless the motion demonstrates extraordinary circumstances justifying the delay in filing the motion, and no further filings shall be accepted by the clerk in that dismissed appeal.

(f) Failure of Appellee to File Corrected Brief Within 14 Days of Notice. When an appellee fails to file a corrected brief within 14 days of the clerk's notice, or, if that date has been extended by the

court, within the time so extended, the appeal will be submitted to the court for decision without further delay, and the appellee will not be heard at oral argument (if oral argument is scheduled to be heard) unless otherwise ordered by the court.

11th Cir. R. 42-4 Frivolous Appeals. If it shall appear to the court at any time that an appeal is frivolous and entirely without merit, the appeal may be dismissed.

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I.O.P. - Dismissal Rules Apply to Principal Briefs. The rules that provide for dismissal of an appeal for appellant's failure to file a brief by the due date, or to correct deficiencies in a brief within 14 days of notice, apply to appellant's or cross-appellant's principal (first) brief only, unless the court orders otherwise.

Cross-Reference: FRAP 3, 38; 28 U.S.C. § 1927

FRAP 46. Attorneys

(a) Admission to the Bar.

- (1) Eligibility.** An attorney is eligible for admission to the bar of a court of appeals if that attorney is of good moral and professional character and is admitted to practice before the Supreme Court of the United States, the highest court of a state, another United States court of appeals, or a United States district court (including the district courts for Guam, the Northern Mariana Islands, and the Virgin Islands).
- (2) Application.** An applicant must file an application for admission, on a form approved by the court that contains the applicant's personal statement showing eligibility for membership. The applicant must subscribe to the following oath or affirmation:

“I, _____, do solemnly swear [or affirm] that I will conduct myself as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States.”

- (3) Admission Procedures.** On written or oral motion of a member of the court's bar, the court will act on the application. An applicant may be admitted by oral motion in open court. But, unless the court orders otherwise, an applicant need not appear before the court to be admitted. Upon admission, an applicant must pay the clerk the fee prescribed by local rule or court order.

(b) Suspension or Disbarment.

- (1) Standard.** A member of the court's bar is subject to suspension or disbarment by the court if the member:
 - (A)** has been suspended or disbarred from practice in any other court; or
 - (B)** is guilty of conduct unbecoming a member of the court's bar.
- (2) Procedure.** The member must be given an opportunity to show good cause, within the time prescribed by the court, why the member should not be suspended or disbarred.
- (3) Order.** The court must enter an appropriate order after the member responds and a hearing is held, if requested, or after the time prescribed for a response expires, if no response is made.

- (c) Discipline.** A court of appeals may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule. First, however, the court must afford the attorney reasonable notice, an opportunity to show cause to the contrary, and, if requested, a hearing.

(As amended Mar. 10, 1986, eff. July 1, 1986; Apr. 24, 1998, eff. Dec. 1, 1998.)

11th Cir. R. 46-1 Bar Admission and Fees. Only attorneys admitted to the bar of this court may practice before the court, except as otherwise provided in these rules. Admission is governed by FRAP 46 and this Eleventh Circuit Rule, and attorneys must also meet the requirements of 11th Cir. R. 46-7. To request admission to the bar, an attorney must complete an application form, available on the Internet at www.ca11.uscourts.gov, and submit the form to the clerk's principal office in Atlanta. The application form must be accompanied by:

- a certificate of good standing issued within the previous six months from a court described in FRAP 46(a)(1); and
- the non-refundable attorney admission fee, which is composed of: (1) the national admission fee prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913; and (2) the local admission fee prescribed pursuant to FRAP 46(a)(3) ~~set by the court and posted on the court's website, payable to Clerk, U.S. Court of Appeals, Eleventh Circuit.~~

Each member of the bar has a continuing obligation to keep this court informed of any changes to addresses, phone numbers, fax numbers, and e-mail addresses.

11th Cir. R. 46-2 Renewal of Bar Membership; Inactive Status. Each attorney admitted to the bar of this court shall pay ~~a the~~ bar membership renewal fee of \$10.00 prescribed by the court and posted on the court's website every five years from the date of admission. A new certificate of admission will *not* issue upon payment of this fee. During the first week of the month in which an attorney's renewal fee is due, the clerk shall send by mail, e-mail, or other means a notice to the attorney using the contact information on the roll of attorneys admitted to practice before this court (attorney roll), and advise the attorney that payment of the renewal fee is due by the last day of that month. If the notice is returned undelivered due to incorrect or invalid contact information, no further notice will be sent. If the renewal fee is not paid by the last day of the month in which the notice is sent, the attorney's membership in the bar of this court will be placed in inactive status for a period of 12 months, beginning on the first day of the next month. An attorney whose bar membership is in inactive status may not practice before the court. To renew a bar membership, including one in inactive status, an attorney must complete a bar membership renewal form, available at www.ca11.uscourts.gov. The renewal form must be accompanied by ~~a the~~ non-refundable bar membership renewal fee of \$10.00. All attorneys must use the court's Electronic Case Files (ECF) system to submit their renewal forms and payments.

After 12 months in inactive status, if an attorney has not paid the bar membership renewal fee, the clerk shall strike the attorney's name from the attorney roll. An attorney whose name is stricken from the attorney roll due to nonpayment of the renewal fee who thereafter wishes to practice before the court must apply for admission to the bar pursuant to 11th Cir. R. 46-1, unless the attorney is eligible to be admitted for a particular proceeding pursuant to 11th Cir. R. 46-3.

11th Cir. R. 46-3 Admission for Particular Proceeding. The following attorneys shall be admitted for the particular proceeding in which they are appearing without the necessity of formal application or payment of the admission fee: an attorney appearing on behalf of the United States, a federal

public defender, an attorney appointed by a federal court under the Criminal Justice Act or appointed to represent a party in forma pauperis.

11th Cir. R. 46-4 Pro Hac Vice Admission. An attorney who does not reside in the circuit but is otherwise eligible for admission to the bar pursuant to FRAP 46 and these rules, and also meets the requirements of 11th Cir. R. 46-7, may apply to appear pro hac vice in a particular proceeding. The following items must be provided:

- a completed Application to Appear Pro Hac Vice form, available on the Internet at www.ca11.uscourts.gov, with proof of service;
- a certificate of good standing issued within the previous six months from a court described in FRAP 46(a)(1); and
- a non-refundable pro hac vice application fee of ~~\$50.00~~ **prescribed by the court and posted on the court's website**, payable to U.S. Court of Appeals, Non-Appropriated Fund, 11th Circuit.

An attorney may apply to appear before this court pro hac vice only two times.

To practice before the court, an attorney who resides in the circuit or who has two times previously applied to appear before this court pro hac vice, must apply for admission to the bar pursuant to 11th Cir. R. 46-1, unless the attorney is eligible to be admitted for a particular proceeding pursuant to 11th Cir. R. 46-3.

The clerk is authorized to grant an application to appear pro hac vice in an appeal not yet assigned or under submission, in such circumstances as determined by the court, when an attorney meets the requirements of the rules.

11th Cir. R. 46-5 Entry of Appearance. Every attorney, except one appointed by the court for a specific case, must file an Appearance of Counsel Form in order to participate in a case before the court. The form must be filed within 14 days after the date on the notice from the clerk that the Appearance of Counsel Form must be filed. With a court-appointed attorney, the order of appointment will be treated as the appearance form.

Except for those who are court-appointed, an attorney who has not previously filed an Appearance of Counsel Form in a case will not be permitted to participate in oral argument of the case until the appearance form is filed.

11th Cir. R. 46-6 Clerk's Authority to Accept Filings.

(a) Filings from an Attorney Who Is Not a Member of the Eleventh Circuit Bar.

(1) Subject to the provisions of this rule, the clerk may conditionally file the following papers received from an attorney who is not a member of the circuit bar and who is not admitted for the particular proceeding pursuant to 11th Cir. R. 46-3:

- a petition or application that initiates a proceeding in this court;